

Opinion No. 53-5676

February 17, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Marshall S. Hester Superintendent New Mexico School for the Deaf Santa Fe, New Mexico

{*70} We are in receipt of your inquiry of February 12th, 1953, relative to the "Equal Employment Opportunities Act" Chapter 161, Laws of 1949. The citation in the statute is Section 57-1201 N.M.S.A., 1941 Compilation, et seq. In your letter you ask two questions, which questions we will answer in the order in which they are set out. I shall refer throughout this opinion to the act as the Fair Employment Practices Act as authorized by Section 57-1214 N.M.S.A., 1941 Compilation.

1. **"Question:** Do the provisions of the Act apply to employees of the State in its executive offices, or is it intended only to apply to private contractors who contract with the State?"

Answer: As pointed out in your letter of inquiry, Section 57-1203 N.M.S.A., 1941 Compilation, sub-section (d), reads as follows:

"(d). The term 'employer' includes the state, or any political or civil subdivision thereof, any person employing four (4) or more persons in same kind of employment within the state, and any person acting in the interest of an employer, directly or indirectly, but does not include a religious corporation or association, or a social or fraternal club not organized for private profit."

This section obviously intends that all public offices are bound by this act so long as four (4) persons are employed in any given employment. This act is based upon the Fourteenth Amendment to the Constitution of the United States. The theory of the Fourteenth Amendment is the equal opportunities available to all persons regardless of their race, color, religion, or national origin or ancestry. Quite simply the rules as set out in the Fair Employment Practices Act provides for a penalty in the event a person who is included within the Act discriminates in employment of any given person by reason of his race, color, religion, or national origin or ancestry. The Fair Employment Practices Act is a statement of policy by the Legislative Department of the government of the State of New Mexico and this statement of policy infringes upon no other provision of the Code or Constitution of this State. The Act goes further and provides a penalty for the noncompliance of this definition of policy.

Therefore, it is the opinion of this office that the employees of the State, be they an executive, secretarial, educational or in any other field whatsoever, can not by reason of race, color, religion, or national origin or ancestry be precluded from employment by the State or any department thereof.

2. **"Question:** If the Act applies to employees of the executive offices of the State, are the employees of the New Mexico School for the Deaf governed by the rules and regulations promulgated by the Labor and Industrial Commission of New Mexico, in view of the statutory and constitutional provisions fixing the control and management of the institution in the hands of the Board of Regents?"

Answer: We are a bit confused by the reference in your letter to the "Labor and Industrial Commission of New Mexico." The Act provides for a Fair Employment Practices Commission and specifies that the Attorney General and the Labor Commission be members of said Commission as ex officio, and further provides that three (3) members be appointed by the Governor. The Act in no other provision refers to the Labor Commissioner and in no place is {*71} reference made to the Labor and Industrial Commission. The duties of the Commission are defined in detail in Section 57-1206 to and including Section 57-1211 N.M.S.A., 1941 Compilation, (Pocket Supplement).

The Constitution of the State of New Mexico provides in Article 12, Section 11 that the New Mexico Asylum for the Deaf and Dumb be at Santa Fe and provides that said institution is a State Educational Institution. Article 12, Section 13 provides that the Legislature shall provide for the control and management of each of said institutions by a Board of Regents. The control which shall be provided by the Board of Regents does not in any way preclude the statutory prohibition available to any legislation. The Legislature has retained control of the appropriation and the Legislature can surely define state-wide policy applicable to all employers and it is doubted by this office if they have it within their power to define policy of the nature defined in the Fair Employment Practices Act and exclude any State Institution or Office.

It is therefore the opinion of this office that the Fair Employment Practices Commission has the authority to apply the Fair Employment Practices Act to any State Institution, Office, or Department. The Act specifically gives the Fair Employment Practices Board the power to investigate, and in the event, unfair practices are being pursued by any person subject to this act, to prosecute the person not so complying. The mere fact that institutions are set up by the Constitution in no way precludes them from being subject to the laws and policies of the State of New Mexico as determined, promulgated, and codified by the Legislature of the State of New Mexico.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General